IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.191 OF 2007

IN

SUMMARY SUIT NO.616 OF 2007

Tarachand Champalal Jain .. Plaintiff.

Versus

Mrs.Subhadra Damodar Kelaskar .. Defendant.

Mr.R.D.Dave i/b.N.N.Vaishnava for plaintiff.

Mr.P.G.Pravin for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 30th JULY, 2007.

P.C.:

1. Heard Mr.Dave, appearing for the plaintiff and Mr.Pravin for the defendant.

2. Admittedly, the case set up in the plaint is that M/s.Motilal Magraj & Co. is a sole proprietary concern of which the plaintiff claims to be a sole proprietor. The business of the firm is of money lending. According to the plaintiff, earlier, this firm was a partnership firm

which consisted of his mother and his brother's wife. Lateron, it became the sole proprietary concern.

3. The brother Magraj, at the relevant time, according to the plaintiff was looking after the affairs of the proprietary business as a Power of Attorney holder of the plaintiff.

4. The said Magraj died on 5th December, 2004.

5. From a perusal of the plaint and the documents annexed thereto, it is apparent that the subject cheques were made the basis of complaint under Section 138 of the Negotiable Instruments Act, 1981. However, the defendant accused was acquitted by observing that the plaintiff complainant could not prove that the liability / payment by cheque is on account of some legally enforceable debt.

6. Now, the suit is based upon some terms arrived at during the course of Section 138 proceedings which also relate to the same liability and which according to Mr.Pravin is allegedly of the year 1999. Considering the observations in the course of the proceedings under Section 138 on the issue of the debt being legally enforceable and finding from the plaint averments that the

right of the present plaintiff to recover the sum is in doubt, I am of the opinion that various triable issues arise for determination and consideration in this summary suit. Accordingly, unconditional leave to defend the suit is granted and the suit is transferred to the list of commercial causes. Written statement and discovery to be completed within a period of 6 and 8 weeks respectively.

(S.C.Dharmadhikari, J.)